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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/963,513	09/27/2001	Gerhard Grolig		1227

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EXAMINER	
BECKER, DREW E	
ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 04/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/963,513

**Applicant(s)**

GROLIG ET AL.

**Examiner**

Drew E Becker

**Art Unit**

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 8-10, 13-15, and 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 406261673A in view of Crevasse [Pat. No. 5,215,495] and EP 340776A1.

JP 406261673A teaches a casing comprising an inner cavity, two ends with one end turned-in (Figure 3), an outer surface with a coating of glycerin (Figure 2), turning it inside-out and placing it on a stuffer when filling it with food (paragraph 0010), the turned-in part extending the full length (Figure 3), and an absence of soaking. JP 406261673A does not recite a closure and flavor agent (claim 1), a fill ring (claim 8), an outer package (claim 9), fiber-reinforced cellulose (claim 10), and the flavor agent being liquid smoke (claim 4), caramel (claim 15), or a protein binder (claim 14). Crevasse teaches a casing comprising a closure (Figure 5, #26), fill rings (Figure 5, #32 & 40), an outer package (Figure 5, #42), and fiber-reinforced cellulose (column 3, line 59). EP 340776A1 teach a casing comprising liquid smoke (page 5, line 50), caramel (page 13, line 15), and zein (page 14, line 32). It would have been obvious to one of ordinary skill in the art to incorporate the features of Crevasse into the invention of JP 406261673A since both are directed to sausage casings, since closures were the conventional

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means of closing casings, since the fill-rings and package of Crevasse protected the casing from damage, since JP 406261673A simply does not state what type of material was used for the casing, and since fiber-reinforced cellulose was commonly used for casings as shown by Crevasse (column 3, line 59). It would have been obvious to one of ordinary skill in the art to incorporate the features of EP 340776A1 into the invention of JP 406261673A, in view of Crevasse, since all are directed to casings, since JP 406261673A already included a coating on the casing (Figure 2), and since the liquid smoke, caramel, and zein coatings of EP 340776A1 provided an effective means for coloring and flavoring the casing and food product (page 5, line 50; page 13, line 15).

3. Claims 11-12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 406261673A, in view of Crevasse and EP 340776A1, as applied above, and further in view of Kubo et al [Pat. No. 4,428,402].

JP 406261673A, Crevasse, and EP 340776A1 teach the above mentioned components. JP 406261673A, Crevasse, and EP 340776A1 do not recite a casing of synthetic polymers such as polyamides or polyolefins. Kubo et al teach a casing comprising nylon (column 4, line 15). It would have been obvious to one of ordinary skill in the art to incorporate the nylon of Kubo et al into the invention of JP 406261673A, in view of Crevasse and EP 340776A1, since all are directed to casings, since JP 406261673A simply does not state what type of material was used for the casing, and since nylon was commonly used for casings as shown by Kubo et al.

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4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 406261673A, in view of Crevasse and EP 340776A1, as applied above, and further in view of JP 51079748A.

JP 406261673A, Crevasse, and EP 340776A1 teach the above mentioned components. JP 406261673A, Crevasse, and EP 340776A1 do not teach polyvinyl pyrrolidone. JP 51079748A teaches a food casing comprising polyvinyl pyrrolidone (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the polyvinyl pyrrolidone of JP 51079748A into the invention of JP 406261673A, in view of Crevasse and EP 340776A1, since all are directed to food casings, since JP 406261673A simply does not state what type of material was used for the casing, and since JP 51079748A teaches that a laminate including polyvinyl pyrrolidone had improved smoking properties and strength (abstract).

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bylenga [Pat. No. 5,709,068] teach a food casing which impregnated with liquid smoke (column 5, line 11).

### ***Response to Arguments***

6. Applicant's arguments filed January 24, 2005 have been fully considered but they are not persuasive.

Applicants argue that EP 340776A1 does not teach adding flavor or color to the food product. However, EP 340776A1 clearly states that "Liquid smoke may be added

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to the casing substrate embodiment for color and flavor transfer to the food product during processing” and that the “indicia may be applied to the casing substrate either before or after the liquid smoke treatment (page 5, lines 50-53).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Drew E Becker  
Primary Examiner  
Art Unit 1761

  
**DREW BECKER**  
**PRIMARY EXAMINER**  
3-31-08